

new mexico
**ETHICS
WATCH**

NMEW Report No. 2



NOT YET WALKING

COMPLIANCE WITH THE FINANCIAL DISCLOSURE ACT BY MEMBERS OF STATE BOARDS AND COMMISSIONS

A Report from New Mexico Ethics Watch

NMEW Report No. 2

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PREFACE

This report is a sequel to New Mexico Ethics Watch's January 2017 report, *Learning to Walk: New Mexico's Anemic Financial Disclosure Regimen*.¹ While this present report can be read independently of *Learning to Walk*, interested citizens and policymakers would be advised to read the two reports in conjunction.

¹ That report is available on NMEW's website at http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf.

PART I

Introduction

In January 2017, New Mexico Ethics Watch published its first report, *Learning to Walk: New Mexico's Anemic Financial Disclosure Regimen*.² That report illustrated the problems with compliance with the Financial Disclosure Act that NMEW discovered by state legislators and cabinet secretaries, all of whom are supposed to file financial disclosure reports with the Secretary of State's office. One of the key discoveries NMEW made was that no one seemed to be adequately tracking the filing of financial disclosure reports for these state officials.³ In the months since the publication of *Learning to Walk*, NMEW expanded its research into compliance with the state's Financial Disclosure Act by examining the submissions required of certain state boards and commissions. NMEW found that not only is compliance with the Act by the members of state boards and commissions appallingly deficient, no one in any of the responsible offices is tracking compliance.

The Financial Disclosure Act⁴ is a state law that mandates certain public officials to file financial disclosure statements with the Secretary of State. These disclosures are important for open government because they give members of the public the opportunity to discern whether actions taken by these officials might be taken for the official's private benefit rather than the public interest. While New Mexico's financial disclosure requirements are rather weak and riddled with loopholes, they provide a start, at least, to a measure of public accountability.

Amongst the individuals required to file financial disclosure statements are the members of certain state boards and commissions. In the words of the Act, “. . . an official whose appointment to a board or commission is subject to confirmation by the senate . . . shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the person holds public office.”⁵ Furthermore, for these board and commission members, “the filing of the financial disclosure statement required by the Financial Disclosure Act is a condition of entering upon and continuing in state employment or holding an appointed position.”⁶ It is important to note that not all boards and commissions have a financial disclosure requirement under the Financial Disclosure Act; only those boards and commissions whose members are confirmed by the Senate come under the Act.

² Available at http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf.

³ It should be noted that the research for *Learning to Walk* encompassed a period before the present Secretary of State took office.

⁴ The Financial Disclosure Act can be found at Section 10-16A-1 NMSA 1978, *et seq.*

⁵ See Section 10-16A-3(B) NMSA 1978.

⁶ See Section 10-16A-3(H) NMSA 1978.

These boards and commissions vary widely in scope, purpose and notoriety. The Boards of Regents of the state's various colleges and universities fall under the scope of the Financial Disclosure Act's regimen. So do agencies with significant impact on the state, such as the State Board of Finance, the New Mexico Finance Authority, the Racing Commission, and the Gaming Control Board. The Directors of many state museums are included in the Act, as well as entities that may be less well-known, such as the Spaceport Authority and the Commission for the Blind.

As is detailed more extensively in Part II of this report, a significant challenge NMEW encountered when trying to determine the level of compliance by the members of boards and commissions required to disclose under the Financial Disclosure Act was that no one is tracking this. A number of state entities have some sort of regulatory control over these boards and commissions—the Office of the Attorney General, which provides counsel to them; the Office of the Secretary of State, which has initial jurisdiction over the Financial Disclosure Act; the Senate Rules Committee, which acts on appointments to boards and commissions; the Office of the Governor, which appoints the members; or the Regulation and Licensing Department, which has some oversight authority over certain boards and commissions. In the end, NMEW created a list of boards and commissions whose members are required to file financial disclosures from a report published by the Legislative Council Service (LCS), the Inventory of Statutory Executive Boards and Commissions, last updated in 2014.⁷

An additional problem NMEW found was that no agency keeps a list of who is on these boards and commissions—adding to the difficulty of determining who is required to file a financial disclosure form. In general, NMEW used the membership listed on a board's or commission's website to determine present membership.

Using the LCS report, NMEW determined there were 55 boards and commissions whose members were required to file financial disclosures under the Financial Disclosure Act. The compliance rate of those filings was, to put it mildly, atrocious. Only three of the 55 boards and commissions were fully compliant, meaning all members had filed the required disclosures. Eight more were partially-compliant—that is all members had filed the forms eventually, although many came in after the January deadline. There were 39 non-compliant boards and commissions—these boards are missing some, or all, of their required financial disclosures. Five boards and commissions seem to be non-operational or defunct, despite being currently in statute. A summary of these findings can be found in Table 1.

⁷ This report can be found at https://www.nmlegis.gov/Publications/New_Mexico_State_Government/inventory_of_statutory_executive_boards_and_commissions_december_2014.pdf.

Table 1: Summary of Compliance of Boards and Commissions			
Compliant	Partially-Compliant	Non-Compliant	Non-Operational
3	8	39	5

This lack of compliance is not acceptable. The Financial Disclosure Act serves a valuable purpose. Enforcement arms of the State need to monitor the Act and ensure compliance.

PART II

Methodology

The Financial Disclosure Act requires most financial disclosure statements to be filed “during the month of January.”⁸ In February 2017, NMEW began its research into compliance with the Financial Disclosure Act’s reporting requirements by the members of the State’s various boards and commissions. As noted in Part I of this report, NMEW’s research into compliance by members of boards and commissions was hampered by the fact that no agency or arm of state government tracks whether boards and commissions are submitting the required financial disclosure forms, and there is no comprehensive list of who must file these forms. NMEW used a number of approaches to ascertain the boards and commissions that needed to comply with the Financial Disclosure Act, as detailed below.

The Legislative Council Service regularly publishes and updates the *Inventory of Statutory Executive Boards and Commissions*. This inventory “includes executive boards, commissions, committees and councils that are administratively attached to cabinet departments or that are adjunct or otherwise not under the direct control of the governor, as well as constitutionally created bodies. . . It also includes advisory boards and committees provided for by statute.” The latest inventory is from 2014, the most recent iteration of this list. The 2014 inventory provided a list of the following 55 boards and commissions for which some or all their members require Senate confirmation and are therefore subject to the Financial Disclosure Act. Not all boards and commissions are required by law to have members file statements. Of the ones that are required to do so, not all members must file. The following boards and commissions do have some members who must file, and are the focus of this report:

- Board of Directors of the National Hispanic Cultural Center
- Board of Regents Eastern New Mexico University
- Board of Regents New Mexico Highlands University
- Board of Regents New Mexico Institute of Mining and Technology
- Board of Regents New Mexico Military Institute
- Board of Regents New Mexico State University
- Board of Regents Northern New Mexico State School
- Board of Regents of the New Mexico School for the Blind and Visually Impaired
- Board of Regents of the New Mexico School for the Deaf
- Board of Regents University of New Mexico

⁸ There are certain times when a financial disclosure form is required to be submitted outside of the regular January filing, such as when a candidate files a declaration of candidacy or nominating petition (Section 10-16A-3(A) NMSA 1978); or within 30 days after the appointment of a state agency head, or an official named to a board or commission requiring confirmation by the Senate, or a member of the insurance nominating committee (Section 10-16A-3(B) NMSA 1978). All of these officials are required to submit a new financial disclosure form in the January following their appointment or election.

- Board of Regents Western New Mexico University
- Board of the New Mexico Farm and Ranch Heritage Museum Division
- Board of Trustees of the Miners' Hospital of New Mexico
- Board of Trustees of the New Mexico Museum of Natural History and Science
- Board of Trustees of the New Mexico Veterans Museum
- Board of Trustees of the New Mexico Film Museum
- Border Authority
- Children's Trust Fund Board of Trustees
- Coal Surface Mining Commission
- Commission for Deaf and Hard-of-Hearing Persons
- Commission for the Blind
- Construction Industries Commission
- Corrections Industries Commission
- Economic Development Commission
- Environmental Improvement Board
- Gaming Control Board
- Governor's Organized Crime Prevention Commission
- Human Rights Commission
- Labor and Industrial Commission
- Military Base Planning Commission
- Mortgage Finance Authority
- Museum Board of Regents
- New Mexico Exposition Center Authority
- New Mexico Finance Authority
- New Mexico Health Policy Commission
- New Mexico Hospital Equipment Loan Council
- New Mexico Industrial and Agricultural Finance Authority
- New Mexico Law Enforcement Academy Board
- New Mexico Lottery Authority
- New Mexico Renewable Energy Transmission Authority
- Occupational Health and Safety Review Commission
- Parole Board
- Personnel Board
- Public Safety Advisory Commission
- Spaceport Authority
- State Board of Finance
- State Fair Commission
- State Game Commission

- State Investment Council
- State Land Trusts Advisory Board
- State Racing Commission
- State Transportation Commission
- Tourism Commission
- Unemployment Compensation Board of Review
- Water Trust Board

NMEW conducted its research on the compliance of boards and commissions with the Financial Disclosure Act using this list of 55 boards and commissions.

NMEW initially requested copies of all financial disclosure statements filed with the Secretary of State's office in January, as part of NMEW's ongoing research into the Financial Disclosure Act, but shortly thereafter the Secretary posted all statements online.⁹ The statements are searchable, if a little tricky to locate. Currently, the search feature is listed under the "Candidates" tab at www.sos.state.nm.us. Prior to the publication of this report, NMEW used the Secretary of State's online system to verify the submission or omission of forms for the members of boards and commissions.

On March 28, 2017, NMEW sent an Inspection of Public Records Act (IPRA) request to the Office of the Governor asking for a list of all members of boards and commissions appointed by the Governor. NMEW requested that the list include the start of the member's term; the duration of the term; the date of their Senate confirmation, if applicable; and a notation if any terms have been renewed and the date of that renewal. The Office of the Governor responded by writing, "The Office of the Governor does not maintain a list to track gubernatorial appointments nor does the Inspection of Public Records Act require the agency to create such a list. As such, the Office of the Governor does not possess any documents that are responsive to your request. Although not requested, for each gubernatorial appointment to a board and commission, the Office of the Governor does file an appointment letter reflecting such executive action with the Secretary of State that may contain some or all of the raw data that you are seeking."

On March 31, 2017, NMEW sent a follow-up request to the Office of the Governor requesting "any list or database created to track the Governor's appointments to boards and commissions." The response was identical to the prior response.

On April 11, 2017, NMEW sent an IPRA request to the Office of the Governor for any and all appointment letters filed by the Office of the Governor with the Secretary of State's Office for each gubernatorial appointment to a board or commission since Governor Martinez took office. The request was considered:

[B]road and burdensome due to the thousands of people who have been appointed. In 2011 alone, Governor Martinez made 457 appointments. Because of the high number of appointments and the time that will be needed

⁹ The financial disclosure statements can be found at: <https://portal.sos.state.nm.us/FinancialDisclosure/search.aspx>.

to gather the appointment letters and redact personal identifying information in accordance with NMAC 1.7.1.12(B) from each page, the Office of the Governor will send, on each Friday until the request is fulfilled, a batch of documents that the Office has prepared in response to this request. Each batch will have no less than 50 pages, with each page being a single appointment letter.

NMEW received the 45th and final batch of documents, which were emailed weekly, on February 9, 2018.

At the same time that NMEW was making these requests of the Governor, NMEW sent a similar request to the Office of the Secretary of State, seeking a list of all appointees to boards and commissions and their terms. NMEW was informed that no such list existed. The Secretary of State's office, however, willingly allowed NMEW to inspect numerous binders containing letters of appointment forwarded by the Office of the Governor.

Still in search of a comprehensive list, NMEW sent two IPRA request[s] to the Regulation and Licensing Department on April 17, 2017, requesting the names and terms of current members of boards and commissions. Both requests were consolidated, and the Department responded by writing:

The New Mexico Regulation and Licensing Department is not the custodian of the records you are requesting. The records may be maintained by Mr. Marcus Blais, Records Custodian, Office of the Governor, 490 Old Santa Fe Trail, Room 400, Santa Fe, NM 87501; Email: marcus.blais@state.nm.us. We are forwarding your request to that agency's custodian for response. To expedite your request, it would be advisable for you to write an additional letter requesting the records to the proper custodian at your earliest convenience.

Finally, NMEW requested a list of members, the start of their terms and the duration of their terms, and the date of their Senate confirmation, if applicable, from the Office of the Attorney General on May 26, 2017. That office responded in a manner similar to RLD, writing:

The records you seek are not within the custody or control of the Office of the Attorney General ("OAG") because the OAG is not responsible for maintaining those records. The records may be maintained by the Office of the Governor, 490 Old Santa Fe Trail, Room 400, Santa Fe, NM 87501 or Marcus.Blais@state.nm.us. I am forwarding your request to these agencies records custodians for response. To expedite your request, it would be advisable for you to write an additional letter requesting the records to the proper custodian at your earliest convenience.

The Governor's website maintains a list of all boards and commissions. Even a cursory investigation could reveal that the information listed there is not updated regularly. A click on each board or commission links to a list of the names of the members. Additionally, some boards and commissions maintain their own websites, often citing a different

membership list than on the Governor's website. NMEW was unable to find the start or end date of the terms of most members in either forum. For the purposes of this report, where possible, NMEW used the board's or commission's website to ascertain membership.

Using the names of individuals listed on either the Governor's website or the entity's website, NMEW cross-checked with the Secretary of State's website to see if each member required to file had indeed done so in 2017. Additionally, NMEW referred to current statutes to verify that all boards and commissions requiring the filing of financial disclosure statements were current and still in law. This process was needlessly cumbersome. What should have taken three to fifteen days – the usual time for a response to a request made to a government entity under the Inspection of Public Records Act (IPRA) – instead took almost an entire year.

PART III

Findings

New Mexico Ethics Watch divided the 55 boards and commissions discussed in this report into four groups. Compliant boards and commissions are those whose members were in full compliance with the requirements of the Financial Disclosure Act. Partially-compliant boards and commissions are those who eventually achieved compliance, though many forms were submitted after the required January deadline. Non-compliant boards and commissions are those who have members who have yet to submit the required financial disclosure form to the Secretary of State. The fourth group are those boards or commission still required in New Mexico statute, but which are seemingly defunct or non-operational. A final examination of all applicable statements filed in 2017 was conducted on January 21, 2018.

Compliant Boards and Commissions

Of the 55 boards and commissions listed in the 2014 LCS inventory, only three were found in full compliance with the filing requirements of the Financial Disclosure Act:

Gaming Control Board: Of the members listed on the entity's website, Basil Ray Willis (who is an ex-officio member and filed in his capacity as a member of the State Racing Commission), Jeffrey Landers, and Salvatore Maniaci filed on time.

Law Enforcement Academy Board: Jaime Quezada, Elisabeth Miller, Darren Soland, Kelly Burnham, Scot Key, Christopher McCall, Peter Kassetas, and Wesley Waller all filed on time. Hector Balderas filed in his capacity as Attorney General.

State Game Commission: Robert Espinoza, Paul Kienzle, William Montoya, Ralph Ramos, Robert Ricklefs, Elizabeth Ryan, and Thomas Salopek all filed on time.

Each member listed on each entity's website, required to file by law, was found to have filed a disclosure statement before or during the month of January.

Partially-Compliant Boards and Commissions

Of the remaining boards and commissions on the list, eight more were found to be partially compliant in that all members listed on each entity's website had filed a disclosure statement for 2017, but not necessarily by the January 31st deadline:

Board of Regents New Mexico Highlands University: Frank Marchi, and John Ramon Vigil filed on time. Sandra Turner, LouElla Marr-Montoya, and Leveo Sanchez filed late.

Board of Regents of the New Mexico School for the Deaf: George Nathan Gomme and John Robertson filed on time. Eugenia Kincaid, Lynnann Barbero, and Ricardo Gonzales filed late.

Commission for the Blind: Art Schreiber filed on time. James Babb and Dallas Allen filed late.

New Mexico Finance Authority: It seems, from the entity's website, that only two of four public positions are filled. Of those, Blake Curtis and John McDermott filed late.

New Mexico Lottery Authority: John Kubiak, Amy Bailey, Mark Koson, Dan Salzwedel, Salvatore Baragiola, and Paul Guerin all filed late.

New Mexico Mortgage Finance Authority: Dennis Burt, Randy McMillan, Angel Reyes, Steven Smith seem to be public members required to file. All four public members filed late.

State Board of Finance: Michael Brasher filed on time. John Kormanik, Robert Aragon, and Adelmo Archuleta filed late.

State Investment Council: There are six public members at present listed on the entity's website. Leonard Rawson, Peter Frank, Linda Eitzen, and Lynn Hoffman all filed on time. Harold Lavender, Tim Jennings, and Scott Smart filed late.

Non-Compliant Boards and Commissions

The following 39 boards and commissions appear to be non-compliant with the Financial Disclosure Act. Of these, approximately 114 members did not file a financial disclosure statement:

Board of Directors of the National Hispanic Cultural Center: DeBeer Brookes McIntyre, Phil Archuletta, Christopher Saucedo, Yvett Vazquez-Elias, and Rebecca Avitia (staff) all filed on time. Paul Maestas, Albert Gallegos, Daniel Gallegos, and Annette Garcia filed late. Darren Cordova, Bill Miera, Carolyn Ortega, Kirk Clifton, LeeAnna Fresquez, Margie Huerta, and Sarah Belle Brown did not file.

Board of the New Mexico Farm and Ranch Heritage Museum Division: Mary Jane Carson, John Nick Carson, Dave DeWitt, Rebecca Spindle and Bob Mayberry all filed late. Jerry Schickedanz is presumably the individual selected to fill the seat of the NMSU representative and is not subject to Senate confirmation. Anthony J. Parra, Deputy Director, NM Dept. of Agriculture, is presumably a designee of Jeff Witte, Secretary at NMDA, and would not be subject to Senate confirmation. Secretary Veronica Gonzales did file in her position as Cabinet Secretary at DCA. Assuming the following are public members subject to Senate confirmation, Beverly Idsinga, Sharon Niederman, and Jim Tomlinson did not file.

Board of Trustees of the New Mexico Museum of Natural History and Science: Gary Friedman, Peter Gerrity, John Montgomery and Leonard Duda filed on time. Laurence Lattman, Maya Elrick, Laura Garcia, Viola Martinez, and Steve West did not file.¹⁰

Board of Regents Eastern New Mexico University: Daniel Patterson filed on time. Jane Christensen and Terry Othick filed late. The university website lists five members. Kekoa VonSchriltz and Edwin Tatum did not file.

¹⁰ Knoner and Kier are listed as members on entity website but are likely private members and therefore not required to file, per statute.

Board of Regents New Mexico Institute of Mining and Technology: Jerry Armijo, David Gonzales, and Donald Monette filed late. Deborah Peacock and Myissa Weiss did not file.

Board of Regents New Mexico Military Institute: No statements filed. Members listed on the entity's website are: Bradford Christmas, Phillip Ingram, Timothy Paul, Barbara Trent, and Stirling Spencer. None filed.

Board of Regents New Mexico State University: Jerean Hutchinson filed on time. Amanda Lopez Askin (no longer on entity website), Mike Cheney, and Debra Hicks filed late. Kari Mitchell and Margie Vela did not file.

Board of Regents Northern New Mexico State School: Rosario Garcia filed on time. Kevin Powers filed late. Melinda DeHerrera, Robert Rhodes, Joshua Martinez, and Damian Martinez are missing.¹¹

Board of Regents University of New Mexico: Tom Clifford filed on time. Robert Doughty, Jack Fortner, Bradley Hosmer, Marron Lee, Alex Romero, and Suzanne Quillen filed late. Of the members listed on the entity's website. Garrett Adcock did not file.

Board of Regents Western New Mexico University: Carl Foster and Janice Aragabright filed on time. Dan Salzwedel, assuming it is the same individual, filed late in his capacity as a member of the NM Lottery Authority, and Jerry Walz filed late. Alrean Murillo did not file.

Board of Regents of the New Mexico School for the Blind and Visually Impaired: Alfred Sena and Agnes Vallejos, and Catherine Gray filed on time. Christine Hall and Alicia McAninch did not file.

Board of Trustees of the Miners' Hospital of New Mexico: Donald Belknap, William Jarrell, and Kathy McQueary—not listed on entity website—filed on time. Kenneth Berry and Raymond Rodarte did not file.

Board of Trustees of the New Mexico Veterans Museum: Governor's website lists nine members, one is an ex-officio member: Sec. Veronica Gonzales. Sec. Fox is also a member. Both filed. This leaves seven members who did not file. The following individuals did not file: Edward Baca, Christine Glidden, Oren Hays, Johnny O'Holguin, Chuck Howe, Herbert A. Lotz, and Hiroshi Miyamura.

Border Authority: Of the listed commission members on the entity's website, Reese Carson and Bill Connor filed late. J. Jay Spivey, and Joseph Dworak did not file.

Coal Surface Mining Commission: One of two public seats is vacant (according to the Coal Surface Commission page). The sole public member, John Guranich, did not file.

¹¹ DeHerrera's name was initially found on both the Governor's website and the entity's website during 2017. She is no longer listed as a member on the entity's website, however she is still listed as a member on the Governor's site. This is an example of the level of confusion and lack of consistency that exists between publicly available listings of board and commission members.

Children's Trust Fund Board of Trustees: Kristi McLain-Cullers and Bridget Schneider filed on time. Priscilla Chavez, Helen Davis and Elizabeth Knight did not file.

Commission for Deaf and Hard-of-Hearing Persons: Concha Dunwell, Don Johnson and Johnny Robertson filed on time. John Fullinwider and Rosemary Gallegos filed late. Austin Welborn did not file.

Construction Industries Commission: Glenn Fellows, Dale Armstrong and Ricky Davis filed on time. Robert Don Kaufman filed late. Kenneth Wooten, Renee Edwards, Vince Alvarado, David Baker, and Lisa Fickling did not file.

Corrections Industries Commission: Paul Robert Alexander filed on time. Nick Brown filed late. Harold Foreman, Jay Armijo, Christine Van Norman Tucker, Ian Serrano, and Alfred Porter did not file.

Economic Development Commission: Larry Stolarczyk filed on time. Alex Romero, Greg Fulfer, Ronald Toya and Janet Green filed late. Doug Redmond, Joseph Semprevivo, Dan Castilleja, and Anthony Tanner did not file.¹²

Environmental Improvement Board: Justin Howalt, Timothy Morrow, Christopher Timm, and John Volkerding filed on time. Greg Fulfer filed late (in his capacity as a member of the Economic Development Commission). Matthew Holt did not file.

Human Rights Commission: Carl Allen and Christopher Elmore filed on time. Henry Gonzalez and Rudy Clarke filed late. Randi Johnson, Chris Pacheco, Luke Ragsdale, and Diamantina Storment did not file.

Labor and Industrial Commission: Edward Hollington filed on time. Andrew Degraauw and Michael Rich did not file.

Military Base Planning Commission: Sherman McCorkle, Charles Malloy, Robert Ed Brabson, Kiel Hoffman, Eric Kivi, Senator William Burt, and William Connor all filed on time. Stacey Martin and John Bledsoe filed late. James Tegnalia did not file.

Museum Board of Regents: Mary Ann Cortese filed on time. George Goldstein, Bruce Larsen and Joseph Thompson filed late. Jo Bounds, Thelma Domenici, Kent Jacobs, John Paul Taylor and Bev Taylor did not file.

New Mexico Hospital Equipment Loan Council: Kent Carruthers, Greg Leyendecker, Christina Campos, and Daniel Lyon all filed on time. Tom MacLean did not file.¹³

New Mexico Renewable Energy Transmission Authority: Jonathan Elms filed on time. Robert Busch filed late. Brian Moore did not file.

¹² Several members were added to entity website, as of last visit on 1/21/18. Their appointment dates are not listed.

¹³ Maclean was, until recently, listed as a member on the Governor's website. If MacLean served in 2017, he was required to file a disclosure statement. If he was not a member of the commission in 2017, then this board was probably compliant. This is another example of the confusion caused by the lack of consistency between publicly available listings of members.

Occupational Health and Safety Review Commission: Bryan Drennan & Robert Roehm filed on time. William Carter did not file.

Parole Board: Abram Anaya, Caryn Apodaca, Laura Chavez, Sandra Dietz, Ellen Gatewood, Barbara Johnson, Amy Loveridge, and Dorothy Pouges filed on time. Ricky Madrid filed late. Danny Carter, David Hoffman, Richard Garcia, Christine Ring, Mark Nunley, and Donna Richmond did not file.

Personnel Board: Megan Muirhead and Jerry Manzagol filed on time. Christine Romero, Rebecca Long, and Dennis Garcia did not file.

Public Safety Advisory Commission: Chris Padilla and Sandra Russell filed on time. Kenneth Blair and Lanny Maddox both filed late. Ralph Rios did not file.

Spaceport Authority: Michelle Coons, and Nathan LaFont both filed on time. Rich Holdridge, Laura Conniff, and Davin Lopez did not file.

State Fair Commission: There are only five members on the Commission per their website. Larry Kennedy and David Sanchez filed on time. Xavier Jurado and Charles Brown filed late. Bill Lee did not file.

State Land Trusts Advisory Board: No statements filed. Not listed on Governor's website. Entity website lists the following members, but none filed a disclosure statement: Dr. Samuel Turner Smallidge, Anthony Casados, Patricia Quintana, Mark Veteto, Royce Maples, Randal Rabon, and Brent Racher¹⁴ did not file.

State Racing Commission: Kenneth Corazza, Gerald Cospers, and Basil Ray Willis all filed on time. Gayla McCulloch and Leonard Blach did not file.

State Transportation Commission: The entity's website lists the following members: Kenneth White, Butch Mathews, Ron Schmeits, David Sepich, Billy Moore, and Keith Mortensen. None filed.

Tourism Commission: Belia Alvarez filed on time. John Garcia, Jennifer Kimball, George Brooks, Jay Stagg, and Scott Hutton filed late. Emerson Vallo did not file.

Unemployment Compensation Board of Review: Membership not listed on Governor's Website. A response to NMEW's IPRA to the Department of Workforce Solutions on October 25, 2017, regarding current membership, listed Richard Branch as the Chairman of the Board, and Loc Troung and John Baldwin as sitting members. Only Troung filed on time under the name "Truong". Richard Branch and John Baldwin did not file.

Water Trust Board: Per the entity website, NMEW presumes the following individuals to be the five members required to file disclosure statements: Robert Baracker, Acequia Water Users Representative; Brent Van Dyke, Representative, Soil & Water Conservation Districts; Timothy D. McGinn, Representative, Irrigation or Conservancy District Ground Water; Greg Alpers, Representative, Irrigation or Conservancy District Surface Water; Debra Hughes, Representative, Environmental Community. Robert Baracker

¹⁴ He was initially listed on entity website and is now no longer listed there. If he served in 2017, he should have filed a disclosure statement.

filed on time. Greg Alpers and Debra Hughes filed late. Brent Van Dyke and Timothy McGinn did not file.

Non-Operational Boards and Commissions

Several boards and commissions were found to be defunct or not in operation. Those are as follows:

Board of Trustees of the New Mexico Film Museum

Exposition Center Authority New Mexico

Governor's Organized Crime Prevention Commission

Health Policy Commission

Industrial and Agricultural Finance Authority New Mexico

In October 2017, NMEW sent an IPRA request to the Office of the Governor requesting the names and terms of current members of each of the boards and commissions in this group. In response, the Office of the Governor released one document listing the names of members of the Health Policy Commission as of July 2014. That was the sole record responsive to the IPRA. Several separate inquiries were made of the departments under which those boards and commissions may have fallen in the past, also. Most departments referred NMEW back to the Office of the Governor. Further details are as follows:

Health Policy Commission, New Mexico: This commission seems to be defunct. The entity website says as much. An IPRA request to the Office of the Governor for the names and terms of current members was responded to with a list of names of members as of July 2014. This was "the sole document in the possession of the Office of the Governor... responsive to [the] request." The members are (or were) Dawn Brooks, Jerry N. Harrison, Frank Hesse, Karen Kotch, Kim Maxwell, Robert P. Romero, Valerie Romero-Leggott, and Susie Trujillo. None filed a financial disclosure statement.

Board of Trustees of the New Mexico Film Museum: The museum seems to have stopped operating several years ago. This board seems to have been under the banner of the Department of Cultural Affairs. An IPRA request was emailed to that department. The department responded, stating there are no records responsive to the request and to inquire at the Office of the Governor.

Exposition Center Authority, New Mexico: An IPRA request was emailed to the General Counsel of New Mexico Expo. The General Counsel referred NMEW to the Office of the Governor, stating that NM Expo falls under the State Fair Commission. New Mexico Expo had no records responsive to the IPRA request.

These boards and commissions are still outlined in statute and, therefore, should be functioning. It is a mystery as to why statutorily mandated boards and commissions have seemingly been made defunct by fiat.

Part IV

Conclusions & Recommendations

Unquestionably, the state's Financial Disclosure Act needs to be strengthened. Part IV of New Mexico Ethics Watch's earlier report on the Act, *Learning to Walk: New Mexico's Anemic Financial Disclosure Regimen*, lists numerous easy and practical suggestions that the Secretary of State could make concerning how the act is regulated, and that the Legislature should make to the Act itself.¹⁵ These changes would make for a stronger, tighter financial disclosure regimen, one in line with best practices around the nation.

For the issues raised in this report, the compliance of members of boards and commissions with the requirements of the Financial Disclosure Act, NMEW makes the following recommendations:

I. Recommendations for the Governor's Office

- A. That the governor's office, in each appointment letter to a board, commission or insurance nominating committee appointee needing senate confirmation, outline the following Financial Disclosure Act requirements:
- That the appointee is required to comply with the Financial Disclosure Act by filing with the SOS a financial disclosure statement within 30 days of appointment (and directing the appointee to the financial disclosure portion of the SOS's website);
 - That the appointee is required to notify the governor's office upon the filing of the required financial disclosure;
 - That the filing of the required financial disclosure statement and notification to the governor's office of the same is a condition of holding the appointed position, without which filing the appointee will not be permitted by law to serve upon the board, commission or insurance nominating committee; and
 - That the appointee is required to file a financial disclosure statement every year in January during which the appointee holds public office, and that failure to file the annual disclosure statement will result in a suspension of the appointee's ability to participate on the board, commission or insurance nominating committee until the appointee's

¹⁵ See Appendix.

annual disclosure statement is filed with the SOS and notification of filing is received by the governor's office.

- B. That the Governor's Office follow up to see if the appointee has complied with the Financial Disclosure Act, and, if not:
- That the Governor's Office inform the appointee that compliance is a condition of serving on the board, commission or insurance nominating committee, and that the appointee's ability to participate on the board, commission or insurance nominating committee is not permitted or is in suspension until the appointee files the initial or annual disclosure statement; and
 - That the Governor's Office inform the SOS that the appointee has not complied with the Financial Disclosure Act and is now subject to the law's compliance actions required or permitted to be undertaken by the SOS, including ensuring voluntary compliance, the imposition of a penalty, or reference of the matter to the Attorney General or a district attorney for a civil injunctive or other appropriate order or enforcement.
- C. That the Governor's Office provide a list of all appointees who are subject to senate confirmation and thus the mandates of the Financial Disclosure Act, and including date of appointment, date of confirmation and duration of term, to the SOS.
- D. That the Office of the Governor compile and maintain an up-to-date list, available to the public on the governor's website, of all members of boards and commissions, noting those who are subject to Senate confirmation (and therefore must file financial disclosures), the date of their appointment, the date of their confirmation, the duration of their terms, and whether they have complied with the Financial Disclosure Act.

II. Recommendations for the Secretary of State

- A. That the SOS make diligent efforts to cross-check the names on the list of appointees with disclosure statements received, to monitor and determine compliance with the Financial Disclosure Act, with regard to both timely filing dates and required disclosures.

- B. That the SOS enforce the requirements of the Financial Disclosure Act, bringing non-compliant appointees into compliance.
- C. That the SOS request funding adequate to permit sufficient monitoring of financial disclosure statements and enforcement of the Financial Disclosure Act.

In general, someone needs to monitor compliance. The Secretary of State is a natural choice, as financial disclosure forms are to be filed in the Secretary of State's office, and the SOS is empowered to monitor compliance under the Financial Disclosure Act.¹⁶ The additional information and communication recommended, above, to be provided to the SOS by the Governor's Office, would assist the SOS in monitoring compliance.

Missing financial disclosure forms restrict the public's ability to see potential conflicts of interest by members of boards and commissions. A second issue that arises is illegal governance. Section 10-16A-3(H) of the Financial Disclosure Act states that the filing of a required financial disclosure statement is a condition of holding an appointed position, for those requiring Senate confirmation. If an official fails to file a disclosure form each January, or within 30 days of appointment, that person cannot, by law, continue serving on the board or commission. NMEW found that there were approximately 114 members of boards and commissions operating absent the required financial disclosure filing for 2017.

Finally, the Legislature and the Governor need to consider the fate of those boards and commissions no longer in operation. Either these boards and commissions should be removed from statute, or they should return to operation.

As NMEW stated at the conclusion of *Learning to Walk*, good government is open government, and good governance requires public accountability. It is bewildering that no one is monitoring the compliance of these boards and commissions with the basic level of accountability NMEW has outlined in this report. There has been talk for years about how New Mexico needs to improve its standards of governance and needs to improve ethics in government. We can start by doing the minimum – making sure that everyone is complying with the laws we have on the books. We need to do this, New Mexico. We can do this.

¹⁶ See Section 10-16A-5(B) NMSA 1978.

Part V

NMEW Compliance Options

1. Follow up to determine whether compliance is now being monitored and/or enforced.
2. Letters or calls to those out of compliance to give them an opportunity to come into compliance.
3. Notice to the Secretary of State's Office, the Governor's Office and other agencies, where appropriate, of continued noncompliance.
4. Filing of complaint(s), after contact re: compliance, notice to appropriate agencies and continued noncompliance.

Appendix

In January of 2017, NMEW made recommendations to the Secretary of State and to the Legislature to improve compliance with the Financial Disclosure Act, as follows:

New Mexico Ethics Watch has a two-pronged proposal for initial reforms of the state's financial disclosure regime. These reforms are simple, commonsense measures that merely require the Office of the Secretary of State to do its job regarding financial disclosures, and require the Legislature to make minor, but important, changes to the Financial Disclosure Act.

Recommendations for the Secretary of State

The first prong calls for the Secretary of State to properly enforce the Financial Disclosure Act, and to ensure that the forms are made easily accessible to the public.

A) The Secretary of State should ensure that all financial disclosure forms are properly completed and reject any that are incomplete or improperly completed. This should include a comparison of one year's filings to a prior year's. The Secretary should indicate on her office's website which officials have not filed a properly-completed form by the required deadline. The Secretary should also aggressively pursue fines against late filers. As of this writing, it is unclear how stringently the Secretary of State's office has been in enforcing the Act, but the number of forms that NMEW has uncovered that are facially non-compliant with the Act seems to indicate that policing enforcement has been lax, at best.

B) The Secretary of State should promulgate regulations to put the Financial Disclosure Act into effect. There is a title in the New Mexico Administrative Code (Title 1, General Government Administration, Chapter 8) reserved for "Governmental Conduct and Conflicts of Interest", but strangely – or tellingly – there are no regulations there.

C) The Secretary of State should post financial disclosure forms on its website for easy access by members of the public, rather than making the public go through the Inspection of Public Records process to obtain a person's form. This used to be the practice of the office – NMEW hopes that the new Secretary of State will return to this practice. The information on the financial disclosure statements is information that the press and the public should be able to obtain automatically, without having to jump through hoops.

D) The Secretary of State should also work to modernize the forms. In 2017, there is no reason that these forms should be filled out by hand when they could easily be completed with interactive PDFs or the like. This would also aid in reading the forms, for the handwriting is frequently nearly illegible. The Secretary should also include modifying the forms to make reporting requirements clearer, such as including an affirmative statement with a check box stating that that a lawyer or consultant had no clients required to be reported.

Recommendations for the Legislature

The second prong calls for the Legislature to make a series of changes to the Financial Disclosure Act so that it is not riddled with loopholes and has reporting requirements so vague as to be worthless. The Legislature should amend the Financial Disclosure Act as follows:

A) Remove the requirement that sources of income be reported under "broad general categories" and real estate holdings by "general description", and instead require specificity in reporting for these categories.

B) Expand collateral filing requirements to include domestic partners and other family or household members.

C) Require reporting of income under bands of income so that it is clear how significant a holding a particular asset or financial interest is.

D) Tighten the requirements surrounding reporting of the filer's residences, requiring a spouse or domestic partner to report their residence address; requiring the filer of the form to indicate whether their residence is owned or rented, and if rented, from whom; and requiring owned residences to be declared along with other real property holdings.

E) Require elected officials appointed to their positions to have to file a financial disclosure within 30 days of appointment, as state agency heads and other appointed officials must.

F) Remove the present limitations on reporting membership on boards, business interests, professional licenses, and similar associations to New Mexico. Such licenses, board memberships, and business interests should be reported wherever they occur.

G) Remove the requirement that the prior year's forms of elected officials be mailed to the official. It is the elected official's responsibility to file these forms, and they should be responsible enough to keep copies of their prior filings. The Secretary of State's office is overburdened as it is without this requirement, which only serves, at best, to replicate errors.

H) Remove the requirement that the financial disclosure forms be retained for only five years. There is no good reason for this requirement. All forms filed for an official should be available as long as that official is in office or a position of authority and should be retained under normal state records retention law.



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